



## DEPARTMENT OF COMMERCE

### INTERNATIONAL TRADE ADMINISTRATION

A-580-870

Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony with the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On August 26, 2022, the U.S. Court of International Trade (the Court or CIT) issued its final judgment in *SeAH Steel Corp. v. United States*, Consol. Court No. 19-00086, Slip Op. 22-100, sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the administrative review of the antidumping duty (AD) order on certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) covering the period September 1, 2016, through August 31, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margins assigned to NEXTEEL Co., Ltd. (NEXTEEL), SeAH Steel Corporation (SeAH), and the non-individually examined companies who are party to the litigation.

DATES: Applicable September 6, 2022.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4880 or (202) 482-6312, respectively.

SUPPLEMENTARY INFORMATION:

## Background

On May 24, 2019, Commerce published its *Final Results* in the 2016-2017 AD administrative review of OCTG from Korea.<sup>1</sup> In this administrative review, Commerce selected two mandatory respondents for individual examination: NEXTEEL and SeAH. Commerce calculated final weighted-average dumping margins of 32.24 percent for NEXTEEL and 16.73 percent for SeAH; Commerce assigned to the non-examined companies a weighted-average dumping margin of 24.49 percent, in the *Final Results*.<sup>2</sup>

SeAH, NEXTEEL, AJU Besteel Co., Ltd. (AJU Besteel), ILJIN Steel Corporation (ILJIN), Hyundai Steel Company (Hyundai), and Husteel Co., Ltd. (Husteel), challenged the *Final Results* on multiple grounds.<sup>3</sup> In its *Remand Order*, the court sustained Commerce's determinations with respect to calculation of constructed value profit based on SeAH's third-country sales from a previous segment of the proceeding; inclusion of a penalty in SeAH's general and administrative (G&A) expense ratio as supported by substantial evidence; the differential pricing analysis; the exclusion of freight revenue profit; and application of an affiliated reseller's G&A expense ratio to SeAH's non-further manufactured products. However, the Court remanded five of Commerce's determinations:

1. The particular market situation determination and adjustment, for further explanation or reconsideration.
2. The reallocation of costs for NEXTEEL's non-prime merchandise based on the actual costs of prime and nonprime products.
3. The treatment of SeAH's production line suspension costs, for further explanation or reconsideration.
4. The recalculation of SeAH's further manufacturing cost.

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<sup>1</sup> See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085 (May 24, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum.

<sup>2</sup> *Id.*

<sup>3</sup> See *SeAH Steel Co. v. United States*, Consolidated Court No. 19-00086, Slip. Op. 21-43 (CIT April 14, 2021) (*Remand Order*).

5. The inclusion of SeAH's inventory valuation losses as G&A expenses, for further explanation or reconsideration.<sup>4</sup>

In its final results of redetermination pursuant to the *Remand Order*, issued on July 16, 2021, Commerce reconsidered the five determinations listed above.<sup>5</sup> In the *Redetermination*, Commerce:

1. Reversed the particular market situation finding and removed the adjustment from the margin calculations for NEXTEEL and SeAH.
2. Reversed its finding with respect to reallocation of NEXTEEL's non-prime products, relying instead on the actual costs of prime and non-prime products as reported by NEXTEEL.
3. Provided further explanation of the treatment of SeAH's production line suspension costs.
4. Provided further explanation of the recalculation of SeAH's further manufacturing cost.
5. Provided further explanation of the inclusion of SeAH's inventory valuation losses as G&A expenses.

As a result, Commerce recalculated the weighted-average dumping margins. The weighted-average dumping margin for NEXTEEL changed from 32.24 percent to 9.77 percent; the weighted-average dumping margin for SeAH changed from 16.73 percent to 5.28 percent; and the weighted-average dumping margin for the non-examined companies changed from 24.49 percent to 7.53 percent.<sup>6</sup>

On August 26, 2022, the CIT fully sustained E&C's *Redetermination*:

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<sup>4</sup> *Id.*

<sup>5</sup> See *Final Results of Redetermination Pursuant to Court Remand, SeAH Steel Co. v. United States*, Consolidated Court No. 19-00086, Slip. Op. 21-43 (CIT April 14, 2021), dated July 16, 2021 (*Redetermination*). Note that this was the second correction, or third filing, of these remand results. On June 30, 2021, Commerce had issued and filed with the Court the Final Results of Remand Redetermination, which contained an inadvertent clerical error in the dumping margins listed on page 3. On July 8, 2021, the Court had issued an order that authorized Commerce to correct this error. On July 9, 2021, Commerce had filed with the Court its correction to the Final Results of Remand Redetermination, which contained yet another inadvertent clerical error in the dumping margin for non-individually-examined respondents on pages 3 and 66. Commerce therefore corrected the clerical error, but did not otherwise modify the original June 30, 2021, Remand Results.

<sup>6</sup> *Id.*

(1) The CIT sustained Commerce’s *Redetermination* with respect to the particular market situation determination and adjustment.<sup>7</sup>

(2) The CIT sustained Commerce’s *Redetermination* with respect to the reallocation of costs for NEXTEEL’s non-prime merchandise based on the actual costs of prime and nonprime products.<sup>8</sup>

(3) The CIT sustained Commerce’s *Redetermination* with respect to the treatment of SeAH’s production line suspension costs.<sup>9</sup>

(4) The CIT sustained Commerce’s *Redetermination* with respect to the recalculation of SeAH’s further manufacturing cost.<sup>10</sup>

(5) The CIT sustained Commerce’s *Redetermination* with respect to the inclusion of SeAH’s inventory valuation losses as G&A expenses.<sup>11</sup>

#### Timken Notice

In its decision in *Timken*,<sup>12</sup> as clarified by *Diamond Sawblades*,<sup>13</sup> the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s August 26, 2022, judgment sustaining the *Redetermination* constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

#### Amended Final Results

Because there is now a final court judgment, Commerce is amending the *Final Results* with respect to NEXTEEL, SeAH, and the non-examined companies who are party to this

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<sup>7</sup> See *SeAH Steel Corp. v. United States*, Consol. Court No. 19-00086, Slip Op. 22-100 (CIT August 26, 2022) (*SeAH Judgement*) at 20.

<sup>8</sup> *Id.* at 23.

<sup>9</sup> *Id.* at 30.

<sup>10</sup> *Id.* at 36-38.

<sup>11</sup> *Id.* at 42-45.

<sup>12</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>13</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

litigation for the period September 1, 2016, through August 31, 2017. The revised dumping margins are as follows:

<b>Exporter/Producer</b>	<b>Weighted-Average Dumping Margin (percent)</b>
NEXTEEL Co., Ltd.	9.77
SeAH Steel Corporation	5.28
Non-examined Companies <sup>14</sup>	7.53

#### Cash Deposit Requirements

Because NEXTEEL, SeAH, AJU Besteel, Husteel, ILJIN, and Hyundai Steel have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rates.

#### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and/or exported by NEXTEEL, SeAH, AJU Besteel, Husteel, ILJIN, and Hyundai Steel, and were entered, or withdrawn from warehouse, for consumption during the period September 1, 2016, through August 31, 2017. Liquidation of these entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess ADs on unliquidated entries of subject merchandise produced and/or exported by NEXTEEL, SeAH, AJU Besteel,

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<sup>14</sup> The non-examined companies which are parties to this litigation and whose rates are subject to change are: (1) AJU Besteel Co., Ltd. (AJU Besteel); (2) Husteel Co., Ltd. (Husteel); (3) Hyundai Steel Company (note that, on September 21, 2016, Commerce published the final results of a changed circumstances review with respect to OCTG from Korea, finding that Hyundai Steel Corporation is the successor-in-interest to Hyundai HYSCO for purposes of determining AD cash deposits and liabilities, *see Notice of Final Results of Antidumping Duty Changed Circumstances Review: Oil Country Tubular Goods from the Republic of Korea*, 81 FR 64873 (September 21, 2016); Hyundai Steel Corporation is also known as Hyundai Steel Company and Hyundai Steel Co. Ltd.) (Hyundai Steel); and (4) ILJIN Steel Corporation (ILJIN).

Husteel, ILJIN, and Hyundai Steel, in accordance with 19 CFR 351.212(b). We will instruct CBP to assess ADs on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis*,<sup>15</sup> we will instruct CBP to liquidate the appropriate entries without regard to ADs.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516(A)(c) and (e) and 777(i)(1) of the Act.

Dated: September 6, 2022

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Lisa W. Wang  
Assistant Secretary  
for Enforcement and Compliance

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<sup>15</sup> See 19 CFR 351.106(c)(2).